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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

REBECCA PIERCE,

Defendant and Appellant.

E071034

(Super.Ct.No. FSB17001534)

OPINION

APPEAL from the Superior Court of San Bernardino County. Harold T. Wilson, Jr., Judge. Affirmed as modified.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Nora S. Weyl, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION

Defendant and appellant Rebecca Pierce fraudulently collected cash aid and food stamps in excess of \$10,000. Following a jury trial, defendant was convicted of one count of obtaining and retaining aid of over \$950 by misrepresentation (Welf. & Inst. Code, § 10980, subd. (c)(2); count 1) and five counts of perjury-welfare fraud (Pen. Code, § 118, subd. (a); counts 2-6). Defendant was sentenced to a split term, consisting of 270 days in county jail and six years 11 months on mandatory supervision as follows: the middle term of three years on count 2, plus consecutive one-year terms on counts 3, 4, 5, and 6, and a consecutive term of eight months on count 1, for an aggregate term of seven years eight months.<sup>1</sup>

On appeal, defendant challenges the sufficiency of the evidence supporting the jury's verdict as to counts 1 through 6 or a finding that she knowingly and willfully made a false statement or had the specific intent to defraud. She also claims that her sentence on count 1 should have been stayed pursuant to Penal Code section 654 because the crime of aid by misrepresentation (count 1) was part of the same factual basis as counts 2 through 6 (perjury-welfare fraud). We find that defendant's sentence on count 1 should

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<sup>1</sup> We note that the superior court's sentencing minute order states, "Mandatory supervision is GRANTED for a period of 6 Years 9 Months." The trial court imposed 2,795 days and suspended 2,525 days, with defendant to serve the remaining balance of 270 days in county jail. However, 2,525 days is six years 11 months mandatory supervision, not six years nine months.

have been stayed pursuant to Penal Code section 654. We, however, reject defendant's remaining contentions and affirm the judgment as modified.

## II

### FACTUAL BACKGROUND

According to welfare department requirements, to qualify for cash aid, there must be a child in the home who is "in need." To qualify for food stamps, the members of the household need to customarily purchase and prepare their meals together. In distributing benefits, the welfare department determines, among other factors, where a child resides by considering who has care and control of the child, purchases clothes for the child, deals with school activities and extracurricular activities for the child, and claims the child on their taxes as a dependent.

Between April 1, 2014, and March 31, 2017, defendant signed multiple documents under penalty of perjury indicating that she was seeking welfare benefits for herself and her son, B.P., from CalWORKS and CalFresh. CalWORKS consists of cash aid, and CalFresh consists of food stamps. Specifically, on her August 5, 2014, February 11 and August 5, 2015, and August 4, 2016 application forms signed under penalty of perjury, defendant checked the box indicating that no one had moved out of her house. Defendant also claimed on her welfare forms signed under penalty of perjury that B.P. resided with her. Defendant received cash aid in the amount of \$315 per month for B.P. She also received food stamps in the amount of \$347 per month, which was the food stamps allotment for two people. During this time period, the County of San Bernardino Human

Resources Systems provided defendant \$7,698 through CalWORKS and \$3,887 in food stamps, for a total of \$11,585.

B.P. was 14 years old in April 2014. Following an argument with defendant (his mother) in 2014, B.P. ran away to J.C.'s home, a deputy sheriff who was a neighbor. B.P. met J.C. in 2013 when J.C. caught B.P. and a few friends vandalizing a house and J.C. told them to fix the damage. B.P. and defendant thanked J.C. for the way he handled the matter, and defendant told B.P. to help J.C. with yard work. Soon thereafter, B.P. and J.C. became friends, and B.P. often went to J.C.'s house after school.

From April 2014 to about January 2016, B.P. began residing full-time with J.C. At J.C.'s residence, B.P. had his own bedroom, clothing, school books, and personal belongings. J.C. provided B.P. with meals, clothes, and school supplies. B.P. slept at J.C.'s home and did not sleep at defendant's residence. In addition, B.P. went on vacations to Hawaii with J.C.'s family.

While he lived with J.C., B.P. visited defendant at her house and ate snacks there, but "[n]othing meal-wise." B.P.'s room at defendant's home was used for storage of defendant's items. While he was living at J.C.'s residence, defendant asked B.P. when he was planning on coming back. Sometime in January 2016, B.P. returned to live with defendant because he got in an argument with J.C. B.P. left defendant's house in May or June 2016 because he thought J.C.'s house would be a better environment for studying and sleeping. B.P. returned to J.C.'s residence where he continued to reside at the time of trial, and J.C. continued to provide B.P. with meals.

At some point while B.P. was living with J.C., J.C. enrolled B.P. in a new school. J.C. signed school paperwork for B.P. and was listed as a contact along with defendant.

J.C. claimed B.P. as a dependent on his tax documents in 2015, 2016, and 2017. Defendant did not give any money to J.C. for food or other needs of B.P., and J.C. did not request it.

In February 2017, B.P. reported to the Welfare Fraud Department that defendant was receiving benefits for him although he did not live with her. B.P. reported defendant because he thought what she was doing was wrong. J.C. had nothing to do with B.P. contacting the welfare department.

After a welfare fraud investigator received B.P.'s complaint, she spoke to B.P. B.P. told her that he had not been living with defendant since April 2014, and had been living with J.C. and sleeping at J.C.'s house. B.P. also stated that J.C. provided his meals and that he had not slept at defendant's home from April 2014 to January 2016, at which point he returned to defendant's home and stayed there until June 2016. B.P. returned to residing with J.C. again in June 2016 and slept there from June 2016 to March 2017. Defendant did not give B.P. money or food, and J.C. handled all of B.P.'s school responsibilities.

The welfare fraud investigator visited J.C.'s home and saw B.P.'s room which contained a bed, his school books, clothes, and a television. The investigator also went to defendant's residence and saw B.P.'s room. Defendant appeared nervous when she showed the investigator B.P.'s room. Two or three articles of clothing were hanging in

the back of the closet, the dresser was in the middle of the bedroom, and boxes and books were stacked in front of the dresser. The bed was devoid of bedding and things were stacked on top of the bed. Defendant stated the items on top of the bed belonged to her. She moved the items from in front of the dresser to show the investigator a couple of pairs of socks, underwear, shorts, and shirts inside which she said belonged to B.P. The investigator concluded that the room did not appear lived in. Defendant also told the investigator that the night before, defendant and B.P. had an argument and he threw things around before he left.

The investigator showed defendant the documents which indicated B.P. lived with her. Defendant confirmed that her signature was on the documents, and that she had initialed the documents. Defendant stated that B.P. lived at her house but spent a lot of time at J.C.'s house. She initially stated that B.P. was at J.C.'s house "a lot," but changed the amount to a couple of nights a week. Defendant then said B.P. went to J.C.'s house on weekends, but another time she asserted it was every night. At the end of the conversation, defendant stated B.P. stayed "50/50" at defendant's house and J.C.'s house. She also asserted that she had given J.C. permission to take B.P. on vacations.

After the investigator came to defendant's house, defendant contacted B.P. Defendant asked B.P. to come over and he went to defendant's house. Defendant was upset about the investigator. B.P. told her that he had reported her because she should not be on welfare.

Defendant testified on her own behalf. She initially stated that B.P. was staying at both her home and J.C.'s house between 2014 and 2015 and that B.P. started staying full time at J.C.'s house in late 2016. She then testified that B.P. was staying with J.C. 50 percent of the time. Defendant later admitted that B.P. did not sleep at her house overnight from 2014 to 2016 or from June 2016 to March 2017. She claimed that she had not given B.P. permission to move out of her house and that B.P. visited her and his grandparents at her house. While at her house, B.P. often ate, used a computer, watched television, and had full access to the house and his bedroom. Furthermore, defendant always offered B.P. dinner. She gave B.P. permission to go on vacation with J.C. and for J.C. to make medical decisions while on vacation, but did not give J.C. permission to make medical decisions for B.P. in Yucca Valley. They never discussed J.C. taking legal guardianship of B.P.

Defendant claimed that J.C. had enrolled B.P. in a different high school without informing her. She also asserted that B.P. had mislead her by telling her he was only going to J.C.'s home temporarily and she believed B.P. was coming back to live with her again. Defendant had asked B.P. to come back to her house several times. She had also maintained a bedroom for B.P. Defendant considered B.P. to be living in her house when she filled out the welfare application forms because she believed B.P. was only temporarily staying with J.C. and B.P. always reassured her that it was only temporary. Defendant claimed that B.P. was "playing" her and J.C. and that B.P. lied a lot and had always had a problem lying. Defendant also stated that B.P.'s allegation that he had not

had a cooked meal at defendant's home during the periods he was staying at J.C.'s house was incorrect. In addition, she had offered to buy food to give J.C. for B.P.

When the welfare investigator visited the residence, the defendant thought it was because of her appeal. Defendant also testified that the welfare investigator had told her she needed to verify her signature on the welfare documents, but revealed during the last five minutes of the visit that she was really there because someone had reported B.P. was not living there. Defendant claimed that B.P. had staged his room at defendant's house to look like a storage room. Defendant confronted B.P. about being reported to the welfare department. B.P. smiled and laughed when he told her that he was the one who reported her and now she could not tell him what to do.

In rebuttal, B.P. testified that he did not ask defendant's permission to go with J.C. or out of town with J.C. He also stated that defendant did not tell him he must come back to her house or that he could not live with J.C. before he filed the welfare fraud report. B.P. also asserted that defendant had asked him to "cover" for her. During the last period in June 2016, B.P. told defendant that he wanted to live with J.C. B.P. denied that he had staged his room to look like a storage room before the investigator went to defendant's house and acknowledged that he continued to visit defendant's house every day after he reported defendant. When B.P. told defendant that he had reported her, he informed her that she had had 18 years to get her life on track and should not be on welfare benefits for 18 years. B.P. reported defendant because he disapproved of her being on welfare for such a long period.



In rebuttal, J.C. testified that he did not ask defendant for permission to take B.P. places on weekends when B.P. was living with him and that he had discussed with defendant about taking B.P. to Hawaii with him. J.C. confirmed that defendant never offered to buy food for B.P. with food stamps or money to eat at J.C.'s house.

### III

#### DISCUSSION

##### A. *Sufficiency of the Evidence*

Defendant contends that there was insufficient evidence to support her convictions for aid by misrepresentation (count 1) and perjury on the welfare forms (counts 2-6). Specifically, she claims there was insufficient evidence to establish that she willfully and knowingly made a false statement or had the specific intent to defraud. We disagree.

A criminal defendant may not be convicted of any crime unless the prosecution proves every fact necessary for conviction beyond a reasonable doubt. (U.S. Const., 5th & 14th Amends.; see Cal. Const., art. I, §§ 7, 15; *In re Winship* (1970) 397 U.S. 358, 364; *People v. Tenner* (1993) 6 Cal.4th 559, 566.) In reviewing claims of insufficient evidence, ““we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” [Citation.] ‘. . . [W]e presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence.’ [Citation.]” (*People v. Wilson* (2008) 44 Cal.4th 758, 806;

see *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Where the jury convicts on circumstantial evidence, that the evidence was reasonably susceptible to a contrary finding does not lead to reversal of the judgment. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.) Reversal is warranted only where it appears “that upon no hypothesis what[so]ever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) These same rules apply when a defendant claims there was insufficient evidence that she or he acted with a specific intent. (*People v. Park* (2003) 112 Cal.App.4th 61, 68.) “Specific intent may be, and usually must be, inferred from circumstantial evidence.” (*People v. Cole* (1985) 165 Cal.App.3d 41, 48.)

Conviction for aid by misrepresentation requires that the defendant make the false statement “willfully and knowingly, with the intent to deceive.” (Welf. & Inst. Code, § 10980, subd. (c).) Perjury likewise occurs when a defendant “willfully and contrary to the oath, states as true any material matter which he or she knows to be false.” (Pen. Code, § 118.)

Here, the jury could have reasonably inferred defendant’s willful intent to deceive and defraud the welfare department from defendant’s statements made under penalty of perjury in her welfare form applications that B.P. lived with her. B.P. repeatedly and consistently testified that he did not live with defendant but with J.C. and that J.C. had clothed him and fed him. J.C. corroborated B.P.’s testimony that B.P. resided at his home and that he had financially supported B.P. J.C. testified that he had provided B.P.

with clothing, food, shelter, and educational support. In addition, B.P. testified that defendant had asked him when he was coming back to her house. Defendant admitted that she had asked B.P. when he was returning home. From this evidence, the jury could have reasonably found that defendant had not made a mistake on her welfare forms, and that her misrepresentations were intentional.

Moreover, additional circumstantial evidence of defendant's knowledge and intent to defraud could be inferred from the welfare fraud investigator's search of defendant's home. In B.P.'s room, there was no bedding on the bed, items were piled there, few items were in the closet, and boxes were blocking the dresser which was in the center of the room. The investigator opined that the room did not appear lived in. Defendant also informed the investigator that the items stacked on top of the bed belonged to her. In contrast, B.P.'s room at J.C.'s house contained a bed with bedding, clothing, school books, and other evidence showing B.P. was residing there. Defendant's statements to the investigator also showed a consciousness of an intent to willfully deceive and defraud the welfare department. In her conversation with the investigator, defendant gave inconsistent statements about how much time B.P. spent at her house. Initially, she stated that B.P. stayed at J.C.'s house "a lot," then changed the amount to weekends, and finally said it was "50/50." Furthermore, defendant's conduct following the investigator's visit to her home showed her willful intent to deceive and defraud. Following the investigator's visit, defendant asked B.P. to come over to her home and asked him why he reported her to the welfare department. She also asked B.P. to cover for her. Those

circumstances reasonably justify the jury's findings that defendant knew B.P. was not residing in her home and her misrepresentations were intentional.

Defendant argues that this evidence is insufficient because the evidence shows B.P. "resided at both homes and lived with the comfort and security of knowing that as soon as he had an argument with one adult, he could return to the home of the other adult around the corner." Defendant also asserts that she had a good faith belief B.P. "still resided with her in this complicated relationship where [B.P.] slept at [J.C.]'s but maintained his relationship with his mother and resided at [defendant]'s house during the day." Defendant further contends that the People's case was "weak" based on multiple questions and requests for read back of B.P.'s and J.C.'s testimony. We disagree.

Defendant's arguments confuse the duties of a jury and those of an appellate court in considering reasonable inferences. Defendant disputes the weight of the evidence and is essentially asking this court to reweigh the evidence before the jury, which we may not do on appeal. (*People v. Jennings* (2010) 50 Cal.4th 616, 638 ["We neither reweigh the evidence nor reevaluate the credibility of witnesses."].) "We 'must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]' [Citation.] 'Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.]' [Citation.] Where the circumstances reasonably justify the trier of fact's findings, a reviewing

court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357-358.) Despite the jury's questions and request for read back of trial testimony, substantial circumstantial evidence supports the jury's inference of defendant's specific intent to deceive and defraud.

Viewing the entire record in a light most favorable to the judgment, we conclude the evidence presented at trial was sufficient for a reasonable jury to have found defendant committed her offenses willfully and with specific intent to deceive and defraud. Accordingly, substantial evidence supports defendant's convictions for aid by misrepresentation (count 1) and perjury on the welfare forms (counts 2-6).

B. *Section 654*

Defendant also argues that her sentence on count 1 for aid by misrepresentation should be stayed pursuant to Penal Code section 654 because it was part of the same indivisible course of conduct, with the same intent and objective as the perjury counts. The People concede that defendant's punishment on count 1 should be stayed. We agree with the parties.

Penal Code section 654, subdivision (a), states, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Penal Code section 654 bars double punishment, including concurrent sentences, for a course of

conduct constituting one indivisible transaction with one criminal objective. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208 (*Latimer*); *People v. Lee* (1980) 110 Cal.App.3d 774, 785.)

“Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of [Penal Code] section 654 depends on the *intent and objective* of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ [Citation.]” (*Latimer, supra*, 5 Cal.4th at p. 1208.) “[I]f all the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once.” (*People v. Evers* (1992) 10 Cal.App.4th 588, 602.) If the court makes no express findings on the issue, a finding that the crimes were divisible is implicit in the judgment and must be upheld if supported by substantial evidence. (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.) Thus, “[w]e review the trial court’s findings ‘in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]’ [Citation.]” (*People v. Green* (1996) 50 Cal.App.4th 1076, 1085.)

In this case, although defendant could be prosecuted for aid by misrepresentation and for perjury, she could not be punished for both offenses. (*People v. Camillo* (1988) 198 Cal.App.3d 981, 995 [defendant convicted of welfare fraud may also be convicted of perjury based on statements made to obtain welfare, but cannot be punished for both

offenses if they are committed with an indivisible intent]; cf. *People v. Williams* (1980) 106 Cal.App.3d 15, 20 [defendant was charged with 13 perjury counts and 10 welfare fraud counts, all dealing with separate claims and individuals; sentence on five perjury counts did not violate Penal Code section 654].) The evidence adduced at trial showed that the offenses were based on the same underlying claims and were committed with the same intent and objective. According to the jury verdict, count 1 applied to the crime of aid by misrepresentation between April 1, 2014, and March 31, 2017, and counts 2 through 6 applied to perjury on August 5, 2014, February 11, 2015, August 26, 2015, August 4, 2016, and February 10, 2017, respectively. The prosecutor specified in closing argument that the date range for count 1 was “April or May of 2014 to January of 2016” and then “June of 2016, and as far as the case is concerned, to March of 2017.” As to the perjury counts, the prosecutor stated the specific individual dates as noted *ante*. In addition, all the offenses involved one individual, namely B.P.

Accordingly, the sentence on count 1 for aid by misrepresentation should have been stayed under Penal Code section 654.

#### IV

#### DISPOSITION

The judgment is modified by staying the sentence on count 1 for aid by misrepresentation under Penal Code section 654. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting the modification and to

forward the amended abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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CODRINGTON  
J.

We concur:

MILLER  
Acting P. J.

SLOUGH  
J.